

Remarks

Claims 1-38 are pending. Claims 1, 4, 7-10, 14-17, 19, 23, 25-29, 31 and 33-38 are amended to more particularly point out and distinctly claim Applicant's invention.

In paragraph 6 of the Office Action, the Examiner rejected Claim 1-38 under 35 U.S.C. § 112, second paragraph, as being indefinite. With respect to the Examiner's comments in paragraph 6(a) regarding Claim 1, amended Claim 1 now recites "production service instances associated with the one or more related accounts..."

With respect to the Examiner's comments regarding Claims 1-38 in the paragraph 6(b), the Examiner states:

In claims 1-38, it is unclear what Applicant asserts as a transaction or contract to buy. In view of James J. White and Robert S. Summer's Uniform Commercial Code, 4th Ed., ("White & Summers") § 3-8, it is the Examiner's factual determination that what constitutes an end of sale is indefinite. In other words, a standard contract requires at a minimum, a firm price and quantity. White & Summers states that when price is agreed to at a later date, the transaction has in effect not ended. Only when the price is known is the transaction actually completed. It is therefore indeterminate as to when the transaction is completed.

Applicant is puzzled by the Examiner's rejection. Applicant's Specification's provides, on page 4, lines 31-33:

"Transaction" here generally refers to a product or service that is offered by a provider (e.g., manufacturer, retailer, wholesaler, distributor, service provider, etc.) for consumption by one or more consumers.

Applicant respectfully submits that the above statement in Applicant's Specification regarding the term "transaction" is consistent with the term's ordinary and customary meaning. Therefore, the Examiner's attempt to import a meaning for the term "transaction" from an extrinsic source (i.e., White and Summers) is improper. The Examiner failed to look to Applicant's Specification for the meaning of the term "transaction" used in Applicant's claims. The meaning the Examiner ascribed to the term "transaction" is therefore totally irrelevant. When properly read in view of the above-quoted statement in Applicant's Specification, Applicant believes that Claims 1-38 fully comply with 35 U.S.C. § 112, second paragraph. Reconsideration of Claims 1-38 is respectfully requested.

The Examiner rejected Claims 1-38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,10,484 ("Halbert"), in view of U.S. Patent 6,324,522 ("Peterson"). The Examiner states:

Halbert discloses a defining a first transaction (the purchase of a product or service) with a first production service being a component of the transaction (the service is a sub component of the featured or sold product, see C4, L25-29 which states "Featured Product: Any product or product variant identified for sale through a co-op. For purposes of this application, the term 'featured product' includes any services which might be identified for sale through a co-op."); determining a count of first production service instances (determining a count of products purchased by a particular consumer); determining a billable entity for the transaction with the billable entity being at least one financial account (the customer's account number such as credit card or checking account number is on file in the system); determining a price applicable to the total of the first production service instances (the price is based upon the aggregate of all the products purchased to take advantage of volume discounting). Halbert does not directly disclose requesting a price quote.

Peterson directly discloses requesting a quote at column 27 (*i.e.* C27). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Halbert to include Peterson's ability to ask for a price quote. By including a price quote feature in Halbert Before any of the purchasing in Halbert begins, a user may simply ask the system for an initial price quote to get a minimum starting point of where the price begins. By getting an initial price quote, the customer is in a better position to evaluate the benefits of joining Halbert's system.

Applicant traverses the Examiner's rejection. As seen from the Examiner's statement above, the Examiner relied upon Halbert's col. 4, lines 25-29, which states in its entirety:

Featured Product: Any product or product variant identified for sale through a co-op. For purposes of this application, the term 'featured product' includes any services which might be identified for sale through a co-op.

HTTP: The Hyper-Text Transfer Protocol.

Thus, contrary to the Examiner's assertion above, Halbert's col. 4, lines 25-29 discloses or suggests none of the "determining" steps in Claims 1, 9 and 26, each of which reciting a billing cycle, production service instances and a pricing method:

1. A method for pricing transactions in real-time, the method comprising:

receiving a request for a real-time price quote for a transaction of a first account, the request being received at a first instance in time during a billing cycle;

determining a first production service, the first production service being a component of the transaction;

determining a count of first production service instances representing the first production service in the transaction;

determining a billable entity for the transaction, the billable entity comprising one or more related accounts, wherein the one or more related accounts includes the first account;

determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;

determining a price applicable to the total of the first production service instances based on a pricing method; and

apportioning the price to the transaction, based on the count of the first production service instances in the transaction.

* * *

9. A method for real-time pricing comprising:

receiving a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance representing a first production service;

based on a pricing relationship, determining a total count of production service instances consumed during the billing cycle up to the first instance in time;

determining a billable service appropriate for the first production service;

calculating a price for the first production service from a price table, based on a first attribute for the billable service and the total count of production service instances consumed; and

apportioning the price to the transaction, based on the number of first production service instances in the transaction.

* * *

26. A computer-readable storage medium having stored thereon computer instructions that, when executed by a computer, cause the computer to:

receive a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance representing a first production service;

based on a pricing relationship, determine a total count of production service instances consumed during the billing cycle up to the first instance in time;

determine a billable service appropriate for the first production service;

calculate a price for the first production service from a price table, based on a first attribute for the billable service and the total count of production service instances consumed; and

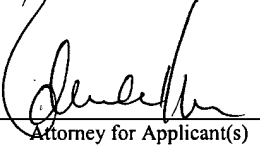
apportion the price to the transaction, based on the number of first production service instances in the transaction.

Peterson also does not disclose or suggest these “determining” steps which relate to a billing cycle, production service instances and a pricing method. Thus, Applicant’s Claims 1, 9 and 26 and their respective dependent claims 2-8, 10-25 and 27-38 are each allowable over the combined teachings of Halbert and Peterson. Reconsideration and allowance of Claims 1-38 are therefore requested.

The Examiner’s comments in paragraphs 9-10 of the Office Action are moot in view of the Examiner’s failure to take Applicant’s Specification into consideration in his construction of the claims (e.g., the Examiner ignored the meaning of the term “transaction” as used in Applicant’s Specification, at page 4, lines 31-33).

For the reasons stated above, Applicant believes that all pending claims (i.e., active Claims 1-38) are allowable. If the Examiner has any questions regarding the above, the Examiner is requested to telephone the undersigned at (408) 392-9250.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 22, 2005.

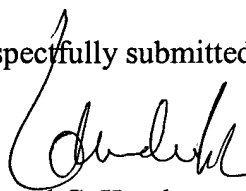


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